

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)

NEW ACCESS COMMUNICATIONS LLC)
and CIERA NETWORK SYSTEMS, INC.)

DOCKET NO. 03-0365

For Authority to Acquire Certain)
Assets of Ciera Network Systems,)
Inc.)

DECISION AND ORDER NO. 20758

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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Filed Jan. 13, 2004

At 9:00 o'clock A.M.

Karen Higashi

Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi

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)	Decision and Order No. 20758
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Inc.)	
_____)	

DECISION AND ORDER

I.

Introduction

NEW ACCESS COMMUNICATIONS LLC ("NAC") and CIERA NETWORK SYSTEMS, INC. ("Ciera")(collectively, "Applicants") jointly request our approval for NAC to acquire certain assets of Ciera in connection with a reorganization of Ciera including, without limitation, all assets associated with Ciera's telecommunications operations in Hawaii and Ciera's customer base ("Proposed Asset Purchase").

Applicants served a copy of the application on the DIVISION OF CONSUMER ADVOCACY OF THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"). On October 28, 2003, the Consumer Advocate filed a statement of position ("Statement of Position") informing us that it does not object to our approval of the Proposed Asset Purchase described in the application, subject to one qualification or recommendation.

II.

Background

A.

Description of Carriers

NAC is a Minnesota limited liability company with its principal place of business located in Minneapolis, Minnesota. NAC and its affiliates hold authority to provide facilities-based and/or resold telecommunications services in thirty (32) states including Hawaii. NAC provides facilities-based and/or resold telecommunications services in thirteen (13) states.¹

Ciera is a Texas corporation with its principal place of business in Houston, Texas. Ciera and its operating subsidiaries provide facilities-based and/or resold telecommunications services in various jurisdictions throughout the United States.²

B.

Description of Proposed Asset Purchase

Ciera and its senior lender, Textron Financial Corporation, through its subsidiary, RFC Capital Corporation division ("RFC"), have entered into a voluntary foreclosure arrangement whereby RFC and NAC propose to execute an Asset Purchase Agreement in which NAC will acquire certain assets

¹In the State of Hawaii ("State"), NAC was granted a certificate of authority ("COA") to provide intrastate telecommunications in the State as a reseller. See Decision and Order No. 20439, filed on September 15, 2003, in Docket No. 03-0210.

²In Hawaii, Ciera was granted a COA to provide intrastate telecommunications in the State as a reseller. See Decision and Order No. 18711, filed on July 31, 2001, in Docket No. 01-0117.

of Ciera including, without limitation, all assets associated with Ciera's telecommunications operations in Hawaii and Ciera's customer base.³

Applicants state that the Proposed Asset Purchase will not involve a change in the manner in which Ciera's customers receive telecommunications services. In particular, Applicants assure the commission and the Consumer Advocate that the rates, terms, and conditions for such services will remain the same, and that Ciera's customers in Hawaii will not be affected by the Proposed Asset Purchase. To ensure a seamless transition and to avoid customer confusion, inconvenience, or disconnection, Applicants represent that they will notify customers of this transaction and of the change in carrier upon commission approval, and prior to the consummation of the transaction, consistent with all state and federal regulations and statutes.⁴

C.

Consumer Advocate's Position

The Consumer Advocate does not object to Applicants' request for approval of the Proposed Asset Purchase, pursuant to Hawaii Revised Statutes ("HRS") § 269-19. It asserts, among other

³In their application, Applicants represent that the assets to be acquired by NAC include, without limitation, any and all equipment and software used to run Ciera's business as of the closing date and Ciera's customer base. NAC will not be acquiring Ciera's COA. We take administrative notice of Ciera's letter to the commission, dated October 14, 2003 and filed on October 20, 2003, indicating that it does not desire to retain its COA.

⁴NAC represents that 152 long distance customers with intrastate services in Hawaii relating to this transaction will become NAC customers on or after the closing date.

things, that it, "recognizes the entry of many telecommunications service providers in the Hawaii market. The market place, it is assumed, will then serve to mitigate any traditional public utility regulatory concerns regarding the proposed asset acquisition. Therefore, if there are any adverse consequences from the proposed transaction, consumers in Hawaii will have the option of selecting another service provider."⁵ Nonetheless, it recommends that the commission require Applicants to provide the commission and the Consumer Advocate with a copy of the actual customer notification letter within five (5) days of the asset purchase.⁶

III.

Discussion

HRS § 269-19 requires a public utility corporation to obtain our consent prior to, among other things, disposing of the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public.

Upon review of record in this docket, particularly Applicants' representations, we find the following:
(1) The telecommunications services currently provided by Applicants are fully competitive; (2) Applicants are non-dominant

⁵The Consumer Advocate's Statement of Position at 2-3.

⁶We agree with the Consumer Advocate's recommendation, but instead will require Applicants to submit a copy of the actual customer notification letter, as represented in their application, with the commission and the Consumer Advocate within thirty (30) days of the date of this decision and order.

carriers; and (3) The Proposed Asset Purchase will have little, if any, effect on Applicants' customers in Hawaii.

Based on the foregoing, we find the Proposed Asset Purchase (excluding the purchase of Ciera's customer base⁷) to be reasonable and in the public interest. We, thus, conclude that Applicants' request that we approve the Proposed Asset Purchase, described above, should be granted pursuant to HRS § 269-19, provided that: (1) Applicants duly comply with the applicable requirements set forth in, among other provisions, HRS § 269-16.92 (changes in subscriber carrier selections) and Hawaii Administrative Rules ("HAR") § 6-80-106 (denial or discontinuance of service); (2) Ciera promptly submit with the commission its request to voluntarily surrender its COA if it does not desire to retain its COA; and (3) Applicants submit a copy of the actual customer notification letter, as represented in their application, with the commission and the Consumer Advocate within 30 days of the date of this decision and order.

IV.

Orders

THE COMMISSION ORDERS:

1. The Proposed Asset Purchase, described in the application, filed on October 9, 2003, is approved pursuant to HRS § 269-19.

⁷The commission has previously held that approval of acquiring a carrier's customer base is not required under HRS § 269-19. *In re Maxxis Communications, Inc.*, Docket No. 99-0099, Decision and Order No. 17063 (July 8, 1999).

2. Applicants shall duly comply with the applicable requirements set forth in, among other provisions, HRS § 269-16.92 (changes in subscriber carrier selections) and HAR § 6-80-106 (denial or discontinuance of service).


3. Ciera shall promptly submit with the commission its request to voluntarily surrender its COA if it does not desire to retain its COA.

4. Applicants shall submit a copy of the actual customer notification letter, as represented in their application, with the commission and the Consumer Advocate within 30 days of the date of this decision and order.

5. Applicants shall conform to all of the commission's orders set forth above. Failure to adhere to the commission's orders shall constitute cause to void this decision and order, and may result in further regulatory actions, as authorized by law.

DONE at Honolulu, Hawaii this 13th day of January, 2004.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:

By 
Janet E. Kawelo, Commissioner



Kris N. Nakagawa
Commission Counsel

03-0365.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20758 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DIVISION OF CONSUMER ADVOCACY
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Karen Higashi

DATED: January 13, 2004